

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
KAGELE FARMS, INC.,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 731

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of the cancellation of Ground Water Application No. G3-23040; having come on regularly for hearing before the Pollution Control Hearings Board on the 10th day of March, 1975, at Spokane, Washington; and appellant, Kagele Farms, Inc., appearing through its attorney, Milton P. Sackmann and respondent, State of Washington, Department of Ecology, appearing through Wick Dufford, Assistant Attorney General; and Board member present at the hearing being W. A. Gissberg and the Board having read and considered the transcript of the testimony, exhibits, records and files herein and having entered on the 21st day of

1 March, 1975, its proposed Findings of Fact, Conclusions of Law and
2 Order, and the Board having served said proposed Findings, Conclusions
3 and Order upon all parties herein by certified mail, return receipt
4 requested and twenty days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,
6 Conclusions and Order; and the Board being fully advised in the premises;
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 21st day of
10 March, 1975, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 23rd day of April, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 CHRIS SMITH, Chairman

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18 W. A. GISSBERG, Member

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20 WALT WOODWARD, Member

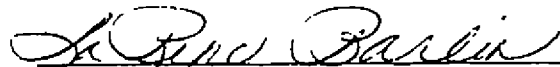
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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1 CERTIFICATION OF MAILING

2 I, LaRene Barlin, certify that I deposited in the United States
3 mail, copies of the foregoing document on the 23rd day of April,
4 1975, to each of the following-named parties, at the last known post
5 office addresses, with the proper postage affixed to the respective
6 envelopes:

7 Mr. Milton P. Sackmann
8 Miller & Sackmann
9 P. O. Box 497
Ritzville, Washington 99169

10 Mr. Wick Dufford
11 Assistant Attorney General
12 Department of Ecology
St. Martin's College
Olympia, Washington 98504

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16 LARENE BARLIN
17 POLLUTION CONTROL HEARINGS BOARD
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26 FINAL FINDINGS OF FACT,
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

A formal hearing was held in Spokane, Washington on March 10, 1975 before Board member, W. A. Gissberg.

Appellant appeared through its attorney, Milton P. Sackmann; respondent, through Wick Dufford, Assistant Attorney General.

Having read and considered the transcript of the testimony and exhibits, the Board makes the following

FINDINGS OF FACT

I.

WAC 173-130-150 provides that:

EXHIBIT A

1 New applications to appropriate groundwater from zone A in
2 the Odessa groundwater subarea will be received by the depart-
3 ment of ecology at any time, and will enjoy a priority of the
4 date of receipt. However, action by the department of ecology
5 in processing the application, as specified by sections
6 90.03.270 through 90.03.290 RCW, will be delayed until after
7 April 1 of each year when the results of an annual measurement
8 of groundwater levels in the Odessa groundwater subarea have
9 been analyzed and the availability of groundwater determined.
10 (emphasis supplied)

11 II.

12 Appellant, on May 2, 1974, filed its application to appropriate
13 groundwaters from Zone A of the Odessa groundwater area. Respondent
14 thereafter determined, through the use of its computer model printout
15 that water was not available because the proposed well would result
16 in a decline in the groundwater level beyond the limits established in
17 existing Management Regulations. However, respondent is now conducting
18 physical measurements on the groundwater table to verify and re-evaluate
19 its original computer printout.

20 III.

21 Notwithstanding the provisions of WAC 173-130-150 (which required
22 the respondent to delay processing appellant's application until after
23 April 1, 1975 when the results of the physical measurement of ground-
24 water levels had been analyzed) respondent notified appellant that no
25 water was available. Respondent further notified appellant that:

26 "If you wish, we will hold your application for one year and
27 re-evaluate the application next March using the results of
28 water - level measurements taken during February, 1975.

29 "Please notify this office within thirty (30) days as to whether
30 you wish to withdraw your application or have it held for
31 re-evaluation in 1975." (Ex. A-3)

32 Respondent's reason for notifying appellant, in advance of the time set

33 FINDINGS OF FACT,
34 CONCLUSIONS OF LAW AND ORDER

1 forth in the WAC rule, was pursuant to an unpublicized "internal
2 operating procedure" of the Spokane office of the Department of Ecology.

3 IV.

4 On September 13, 1974 respondent was, in effect, requested by
5 appellant to re-evaluate the application in 1975 (Ex. A-4). Nonetheless,
6 on September 18, 1974, respondent determined and advised appellant that
7 the application had been cancelled because appellant had failed to
8 request re-evaluation within 30 days from July 29, 1974 (Ex. A-5).
9 Appellant appeals from the Department of Ecology's determination
10 contained in Ex. A-5.

11 V.

12 Any Conclusion of Law hereinafter recited which should be deemed
13 a Finding of Fact is hereby adopted as such.

14 From these Findings the Pollution Control Hearings Board comes
15 to these

16 CONCLUSIONS OF LAW

17 I.

18 Respondent's internal office procedure purported to establish a
19 30 day statute of limitations. The procedure established by
20 WAC 173-130-150 cannot be abrogated in such a manner even though such
21 WAC procedure is not required by statute.

22 II.

23 In any event, no harm has resulted to respondent by virtue of
24 appellant's response which was tardy by 15 or 16 days.

25 III.

26 Appellant's application of May 2, 1974 should be re-evaluated

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 using, and in light of, the results of water-level measurements taken
2 in 1975.

3 IV.

4 Any Finding of Fact which should be deemed a Conclusion of Law is
5 hereby adopted as such.

6 Therefore, the Pollution Control Hearings Board issues this

7 ORDER

8 Respondent shall re-evaluate appellant's application, whose priority
9 date is May 2, 1974.

10 DONE at Lacey, Washington this 21st day of March, 1975.

11 POLLUTION CONTROL HEARINGS BOARD

12 W. A. Gissberg
13 W. A. GISSBERG, Member

14 Chris Smith
15 CHRIS SMITH, Chairman

16 Walt Woodward
17 WALT WOODWARD, Member

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